

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

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AND

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THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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WRIT PETITION NO.21929 OF 2000

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ORDER: (Per TCSR,J)

The petitioner seeks a writ of certiorari to quash the Judgment dated 27.03.2000 passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, Hyderabad, in L.G.C. No.81 of 1997.

The unsuccessful petitioner in L.G.C. No.81 of 1997 is the writ petitioner. It filed the land grabbing case to declare the respondent as land grabber and to deliver possession of the land in dispute which is in an extent of 900 square yards and marked as A, B, C, D in the sketch plan appended to the petition after removing the unauthorized constructions made thereon. The applicant claims that it is a trust engaged in charitable activities like imparting education, etc. The land in dispute is a part of the land measuring Ac.14.29 guntas covered by survey Nos.19, 350 to 356 situate at Guddimalkapur village, Asifnagar Mandal, and owned by Chintala Sattaiah, Chintala Laxminarayana and Chintala Jaimurthy. By means of an agreement dated 21.01.1979 the petitioner agreed to purchase Ac.6.00 of land out of Ac.14.29 guntas covered by survey Nos.19, 350 to 356 from the aforesaid joint owners. Subsequently, there had been variation of the extent agreed to purchase and by mutual consent the land in an extent of Ac.5.00 was demarcated which is in a rectangular shape and as delineated in the sketch plan appended to the petition. Pursuant thereto, three separate supplemental agreements were executed in the month of November/December, 1980. Possession was delivered to the applicant, which applied to the Municipal Corporation of Hyderabad,

for issuance of permit and sanction plan for construction of College building and a compound wall. The applicant constructed compound wall around the land of Ac.5.00 thus purchased by it and the College building on the rear side portion of the said land as per the sanctioned plan. The applicant has been running Pharmacy College, Degree College and High School in the said building complex under the name and style of "G.Pulla Reddy College of Pharmacy, G.Pulla Reddy Degree College and G.Pulla Reddy High School". The open land left out has been earmarked for play ground. The State of Andhra Pradesh also granted exemption under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976. Regular registered sale deeds dated 01.09.1988 were executed by the owners in favour of the applicant. Thus the applicant is the absolute owner and possessor of the said Ac.5.00 of land.

The description of the land as given in the schedule appended to the application, is a rectangular shape having a length of 230 feet on the northern side facing the main road from Mehdipatnam to Golconda and covered by survey Nos.19, 21, 351, 352, 355 and 356 of Guddimalkapuram Village. Initially, due to inadvertence, survey No.21 was not mentioned in the supplemental agreement and the powers of attorney executed by vendors in favour of the applicant trust and also in the registered sale deeds obtained later. Even if the disputed land is found to be covered by survey No.21 it forms part of the property sold to the applicant, as aforesaid.

The respondent was setting up the claim over an extent of 900 square yards on North West corner of the schedule mentioned land as purchaser from Laxminarayana, one of the joint owners, under an agreement of sale of the year 1982. The land of 900 square yards thus claimed by the respondent is shown in red colour in the sketch attached to the application as application schedule land. In the first week of May, 1997 the respondent attempted to grab the application schedule land. The applicant, therefore, filed a suit

O.S.No.1629 of 1997 on the file of the VII Assistant Judge, City Civil Court, Hyderabad, and obtained an interim injunction against the respondent. Despite the injunction order which is subsisting, the respondent broke open a part of the compound wall on the North West corner of the application schedule land and constructed a room in an area of 100 square yards illegally and unauthorisedly. The respondent also filed a counter suit O.S.No.139 of 1997 (O.S. 743 of 1997.) before the Vacation Civil Judge, City Civil Court, Hyderabad, and obtained an ad interim injunction. The respondent is acting with muscle and money power at his command.

The case of the respondent is that the application schedule land does not form part of Ac.5.00 of land purchased by the petitioner since it is covered by survey No.21 and survey No.21 is not reflected in any of the agreements of sale or the sale deeds executed in favour of the applicant trust. The respondent is in actual physical possession and enjoyment of the said land. He filed a suit O.S.No.743 of 1997 against the petitioner for perpetual injunction and a suit O.S.No.581 of 1997 against the executants of the sale agreement in his favour for specific performance. The injunction order granted initially in both the suits was made absolute by the Court of IV Additional Judge, City Civil Court, Hyderabad. The property claimed by the petitioner in O.S.No.1629 of 1997 is totally different from the property claimed by the respondent in O.S.Nos.743 of 1997 and 581 of 1997 and, therefore, there have been no merits in the application.

After filing of the application, the petitioner got the application suitably amended by including the survey No.21 and thereafter the respondent filed a rejoinder denying the claim of the applicant.

The learned Special Court framed the issues at the time of settlement of issues as under:

- 1) Whether the applicant society has title to the application schedule property?
- 2) Whether the rival title set up by the respondent is true, valid and binding?

- 3) Whether the respondent is a land grabber within the meaning of Act XII of 1982? and
- 4) To what relief?

At the time of enquiry, two witnesses were examined on the side of the petitioner and Exs.A.1 to A.25 were got marked. Two witnesses were examined on the side of the respondent and Exs.B.1 to B.8 and Ex.C.1 report of the Commissioner were marked.

Appreciating the evidence adduced on either side, the learned Special Court was of the view that the applicant failed to establish its title to the application schedule land and consequently the respondent was not a land grabber. Eventually, it dismissed the application under the impugned Judgment. It is now being assailed, as aforesaid.

Sri D. Prakash Reddy, learned senior counsel, would contend that the land in an extent of Acs.5.00 which was in rectangular shape with 230 feet width on the northern side was sold to the applicant, therefore, the measurement on the northern side should have been taken into consideration for fixing the boundaries. The learned senior counsel would contend that it is no matter whether Sy.No.21 has been mentioned in the sale deeds or not when once the sale deeds of the applicant are localized and the land covered by them is identified on ground.

On the other hand, Sri O.Manohar Reddy, learned counsel appearing for the respondent, would contend that the report of the Commissioner would clearly show that the application schedule land is covered by Sy.No.21, which is not the subject matter of the sale deeds and the applicant cannot get title over the same by mere amendment of the pleadings when the title deeds of the applicant do not support the same.

Having regard to the rival contentions the controversy seems obviously centers round the question as to what exactly the property that was purchased by the applicant under three registered sale deeds preceded by the agreements of sale and supplementary agreements of sale, a fortiori when the respondent also purchased the property from

one of the three joint owners who sold the land in an extent of Acs.5.00 to the applicant.

The facts are obvious and simple. It needs no reference to the parole evidence adduced on the point on either side. If the sale deeds under which the applicant purchased the property and the sale deed under which the respondent purchased the property are localized, the controversy would have been resolved and that seems to be the correct method for effective resolution of the dispute in between the parties *inter se*. Admittedly, Chintala Sattaiah, Chintala Laxminarayana and Chintala Jaimurthy were the joint owners of the land admeasuring Acs.14.29 guntas situate at Guddimalkapur village, Asif Nagar Mandal, Hyderabad. As per the claim of the applicant, he initially agreed to purchase from the joint owners Ac.6.00 of land out of Ac.14.29 guntas under an agreement of sale dated 21-01-1979. Subsequently, the extent had been reduced and it was mutually agreed to convey Ac.5.00 of land instead of Ac.6.00 of land. The specific case of the applicant seems to be that the agreement was to sell Ac.5.00 of land which is in a rectangular shape as per the boundaries delineated in the sketch plan. In the plan, the measurement of the northern boundary has been shown as 230 feet. Accordingly, three supplementary agreements came to be executed by the vendors in favour of the applicant, followed up eventually by a registered sale deed and later possession was delivered to the applicant and he constructed the college building and a compound wall all along the land of Ac.5.00, after obtaining the necessary permission from the Municipal Corporation of Hyderabad. Obviously, the State Government granted exemption under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 for alienation of Ac.5.00 of land in favour of the applicant by the original owners. It appears that it is only after such sanction the sale deeds dated 01-09-1988 were executed by the vendors in favour of the applicant. When these specific details have been given in the application, the

respondent while expressing want of knowledge denied in general the said averments made *inter alia* in the application while putting the applicant to strict proof of the same.

The specific case of the respondent seems to be that he purchased 900 square yards of land in the north-west corner covered by Sy.No.21 from one of the three original owners and that piece of land does not form part of Ac.5.00 of land purchased by the petitioner. Admittedly, the respondent purchased the property by means of a registered sale deed. However, the title deed of the respondent has not been filed before the Court. Instead, the respondent is seeking to rely upon very much the order and decretal order of the civil Court in I.A.No.949 of 1997 in O.S.No.743 of 1997. There has been no gainsaying that the applicant purchased the property from the original owners far earlier to the purchase of the land by the respondent from the self-same vendors. Having regard to the said fact, it shall be the endeavour of any prudent person to know what was the land purchased by the applicant by means of three registered sale deeds and what was the land that was sold by the vendors of the applicant later to the respondent. In the event of any conflict, obviously the recitals made *inter alia* in the sale deeds executed by the owners in favour of the applicant will prevail vis-a-vis the recitals in the title deed of the respondent. The maxim *nemo dat quod non habet* meaning thereby, no one can convey a better title than what he has would squarely apply to such situation. Instead of trying to know whether the land covered by Sy.No.21 has been included in the title deeds of the applicant or not and what is the effect of the omission thereof in the title deed, it is expedient in the interest of justice to know what was the property conveyed to the applicant by means of three registered sale deeds and what was the property conveyed to the respondent by means of another registered sale deed by the same vendors.

A Commissioner was appointed in this case by the learned Special Court and the Commissioner submitted Ex.C1 report. A

perusal of the said report shows that in the warrant entrusted to him the Court directed him *inter alia* to locate in the first instance Sy.No.21 and to identify whether the application schedule property falls in the said Sy.No.21 or in the other survey numbers and if the property falls in the other survey numbers, the said survey numbers are also to be identified besides identifying the property with reference to three sale deeds dated 01-09-1988 and plans appended thereto. However, the Commissioner *inter alia* in his report stated that he had located the land bearing Sy.No.21 with reference to the validated town survey records and found that the application schedule property to an extent of 686 square meters is falling in Sy.No.21, which is correlated to T.S.No.1/2, Ward No.21, Block 'H' of Guddimalkapur village. It is further mentioned in his report that he had also measured the property which is under the occupation of the applicant which has been purchased under three sale deeds. However, the Commissioner failed to follow the direction given in the warrant to the effect that the property shall be identified with reference to the three sale deeds dated 01-09-1988 and plans appended thereto. What is obligatory on the part of the Commissioner as can be seen from the direction given to him in the warrant *inter alia* is that he should localize the land that has been purchased by the applicant under three different registered sale deeds and clearly described in the plans annexed thereto. Similarly, it is expedient to localize the land that has been purchased by the respondent by means of a registered sale deed. Of course, such a direction has not been incorporated in the warrant entrusted to the Commissioner by the Court. It is no doubt true that the land purchased by the applicant under three registered sale deeds is localized and thereby identified it tilts the scales, but it would be expedient if the properties covered by the respective sale deeds of the parties are identified, that will put an end to the main controversy or contentious issue between the parties *inter se*. Instead of making such an endeavour, the learned Special Court proceeded in a different

direction so as to see whether the application schedule land is covered by Sy.No.21 or not. Having dealt with the proposition sought to be canvassed before it by the parties that the boundaries will prevail over the extent or khatha number, the learned Special Court did not apply the principle in the instant case. Having regard to the well settled legal position that the boundaries will prevail over the extent or khatha number mentioned in the sale deeds, and the other principle that no one can convey a better title than what he has, if the property is clearly identifiable by the description as given in the schedule with reference to the boundaries the learned Special Court should have considered as to whether the application schedule land is covered by the three registered sale deeds under which the applicant purchased admittedly Ac.5.00 of land which has been delineated and demarcated clearly by means of plans attached thereto with a specific recital *inter alia* in the sale deed that the property has been described clearly in the plans attached to the sale deeds, which in our considered view makes the plans attached to the sale deeds as an integral parts of the sale deeds. Therefore, it is visibly clear that a mistake has been committed by the Court below in having approached the problem in a different direction than the one which is required to be treaded upon, which eventually resulted in non-resolution of the dispute in between the parties. For the above reasons, I see a clear error that has been committed by the learned Special Court in the instant case which vitiates the proceedings.

For the above reasons, the Writ Petition is allowed and the impugned order is hereby set aside and the matter is remitted to the learned Special Court for fresh disposal in the light of the observations made *inter alia* in the order.

(T.CH.SURYA RAO,J)

(G.CHANDRAIAH,J)

Dated 25th April, 2007.

VGSR/SKMR

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

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AND

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THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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WRIT PETITION NO.21929 OF 2000

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DATED 25—04—2007

Gunnampally Pulla Reddy Charitable Trust,
Rep. by its Managing Trustee
Sri G.Pullu Reddy,
S/o Hussain Reddy,
H.No.11-5-452, Red Hills,
Hyderabad.

... Petitioner

v.

Syed Akhter,
S/o Late Syed Imam,
H.No.9-4-77/19, Nizam Colony,
Tolichowki,
Hyderabad.

... Respondent

